U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

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File: WAC-99-185-51102 Office: California Service Center Date: DEC 8 2000

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(P)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(P)(i)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a professional indoor soccer team. The team filed a Form I-129 (Petition for a Nonimmigrant Worker) under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(P)(i), seeking a change of previously approved employment under the beneficiary's current P-1 status. The petitioner, the [redacted] team, seeks authorization to employ the beneficiary who was previously authorized employment with the [redacted] team.

The director denied the petition finding that the petitioner failed to submit a written consultation from the appropriate labor organization as required by 8 C.F.R. 214.2(p)(2)(ii)(D). The director stated that the petitioner failed to submit the required document despite a written request to do so and noted that an appropriate labor organization did exist in the sport.

On appeal, counsel for the petitioner argued that a "peer review" document was submitted with the original extension request and stated that an additional copy of that document was now being submitted. A letter dated August 5, 1998, from [redacted] was submitted attesting to the fact that the beneficiary has "extraordinary ability" as a goal keeper.

Under section 101(a)(15)(P)(i) of the Act, an alien having a foreign residence which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or sponsor. Section 214(c)(4)(A) of the Act, 8 U.S.C. 1184(c)(4)(A), provides that section 101(a)(15)(P)(i) of the Act applies to an alien who:

> (i) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, and
>
> (ii) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

8 C.F.R. 214.2(p)(7) requires a written consultation from an appropriate labor organization verifying the alien's qualifications or in the alternate a letter of no objection to the alien's employment from the labor organization. Unlike some other nonimmigrant classifications, there is no provision for the substitution of an individual or group "peer review" attestation in lieu of a labor consultation in a petition for P-1 classification.

Therefore, the petitioner has failed to overcome the director's objection.

Administrative notice is made that the petition is deficient on additional grounds. First, 8 C.F.R. 214.2(p)(ii) requires the submission of any written contracts of employment and an explanation of the duration of the services to be performed, such as the itinerary of the sport season including beginning and ending dates. The petitioner submitted a "Standard Player Contract" in the name of the World Indoor Soccer League, L.L.C. and the articles of incorporation of [redacted] The record does not make clear whether the beneficiary has been or will be employed by a sports league or by an individual team or the duration of the season. Therefore, the petitioner has not adequately satisfied this requirement. The role of the [redacted] in this proceeding is also unclear.

Second, P-1 classification is available to an alien athlete who will be a member of a major United States sports league or team. See 8 C.F.R. 214.2(p)(4)(ii)(B)(1). The petitioner failed to submit an explanation of the governing structure of professional indoor soccer or documentation establishing that the World Indoor Soccer League, L.L.C. constitutes a major United States sports league for the purpose of this proceeding.

Third, 8 C.F.R. 214.2(p)(4)(ii)(B)(2) requires, in pertinent part, evidence of having participated in the prior season of the sport with a major United States league. The record in this matter does not establish that the beneficiary participated during the prior season with his original employer. The record, in fact, contains news clippings indicating that the beneficiary was employed as a high school soccer coach. Therefore, the petitioner has failed to satisfy the prior season experience requirement.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.